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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	
Review of Policies and Rules Concerning	)	CC Docket No. <u>00-257</u>
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the Commission's Third Further Notice in this proceeding, proposing as part of its biennial regulatory review to adopt expedited procedures for processing the sale or transfer of carriers' presubscribed customers in a manner that will facilitate those transactions while adequately protecting consumers' interests under the Commission's carrier selection rules.<sup>1</sup>

<sup>1</sup> 2000 Biennial Regulatory Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket Nos. 00-257 and 94-129, Third Further Notice of Proposed Rulemaking, FCC 00-451, released January 18, 2001 ("Third Further Notice"), published 66 FR 8093 (January 29, 2001).

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AT&T supports the Commission's objective in this proceeding of reducing the "significant time and resources" that carriers must otherwise incur to petition, where necessary, for waiver of the Commission's carrier selection rules in connection with a sale or other transfer of subscribers between carriers. Third Further Notice, ¶ 3. As the Commission also recognizes (id.), the current waiver process creates substantial uncertainties for carriers regarding the date when the Commission will grant their petitions.<sup>2</sup> These burdens on carriers (as well as on the Commission's own scarce administrative resources) are unnecessary because, as the Commission acknowledges, the staff "routinely grants such requests" when the waiver applicants have provided necessary information. Id. The procedures proposed in the Third Further Notice, as modified in accordance with AT&T's proposals in these Comments, will alleviate these burdens on both carriers and the agency while fully preserving the consumer protection objectives of the Commission's carrier selection rules. These measures, moreover, should apply not only to interexchange carriers ("IXCs"), but also to customers of local exchange carriers ("LECs") affected by the sale of exchanges between such carriers. Local carrier changes are fully subject to the Commission's carrier selection rules,<sup>3</sup> and

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<sup>2</sup> Absent modification of the Commission's carrier selection procedures in this proceeding, however, a waiver is the only course available to carriers because, as the Commission acknowledges, in transactions of this type it is generally infeasible to obtain individualized authorizations from affected customers. Third Further Notice, ¶ 3.

<sup>3</sup> See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, 14 FCC Rcd 1508, 1557 (1998) (¶ 81).

local customers are equally deserving of the consumer protection afforded by those rules.<sup>4</sup>

Under the Commission's current waiver process, carriers seeking to acquire end users from another carrier have generally been required to provide advance written notice of that transaction to the affected subscribers.<sup>5</sup> As a general matter, AT&T supports adoption of this prior notice requirement, as well as the Commission's proposed 30 day notice interval (Third Further Notice, ¶ 6) in intercarrier sales or transfers of presubscribed customers.<sup>6</sup> That notice should specify that the acquiring carrier will

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<sup>4</sup> The Commission's current procedures for intercarrier sales of local exchanges were adopted prior to the Telecommunications Act of 1996 ("1996 Act"), which extended Commission authority over carrier selections to local carrier choices. See, e.g., U S WEST Communications, Inc. and Eagle Telecommunications, Inc. (Petition for Waiver), 10 FCC Rcd 1771 (1995)(setting forth criteria for evaluating exchange sales). Those procedures should therefore be modernized to account for the adoption of the Commission's carrier selection rules.

Additionally, although it is beyond the scope of the current proceeding, AT&T submits that the Commission must adopt further requirements for such exchange sales to reflect other changes in the competitive landscape resulting from the 1996 Act and to avoid artificially increasing costs to other carriers. These changes include requiring the transferee to (a) honor interconnection agreements entered into by the transferor; (b) refrain from claiming a rural exemption where the transferor had not qualified for that status, and (c) refrain from increasing access charges based on the transfer from another carrier (e.g., a price cap LEC).

<sup>5</sup> See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 (McLeod Telecommunications Services, Inc. Petition for Waiver), Order, DA 00-2641, released November 24, 2000.

<sup>6</sup> However, in appropriate instances (where, for example, the acquired carrier's financial condition necessitated prompter consummation of the transaction, the Commission has authorized deviations from the advance notice criterion. See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 (Sprint Communications Company, L.P. Petition for Waiver), 14 FCC Rcd 17633 (1999). The Commission should

(footnote continued on following page)

become those customers' telecommunications service provider following the implementation of the acquisition or sale. The notice letter should therefore advise affected customers that they have the right to select another carrier prior to, or after, the sale or transfer of customers to the acquiring carrier, as proposed in the Third Further Notice (¶ 6).<sup>7</sup>

AT&T also believes that, in accordance with the objectives identified in the Third Further Notice (*id.*), the acquiring carrier should provide affected customers with information regarding its rates, terms and conditions of service. Because the calling plans and rates available from the acquirer often may differ substantially from those available from their current carrier, the most effective method for providing this information to affected customers is by directing them in the notice to the acquiring carrier's informational Web site established pursuant to the Commission's detariffing decisions.<sup>8</sup> To further facilitate customer understanding, the notice letter should also

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continue to grant modifications to the schedule adopted in this proceeding where justified by the specific conditions of an intercarrier transaction.

<sup>7</sup> Insofar as notice may need to be provided to customers with disabilities, the Commission has already prescribed regulations to implement Section 255 of the Communications Act, 47 U.S.C. § 255, and the Commission should not adopt separate requirements to govern these intercarrier transactions (Third Further Notice, ¶ 6).

<sup>8</sup> See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, 11 FCC Rcd 20730 (1996)(requiring IXCs that have established Web sites to post information on current rates, terms and conditions in a timely and easily accessible manner, and to update such information regularly); *id.*, Order,

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provide a toll-free service number at which affected subscribers may call the acquiring carrier with questions or to obtain additional information regarding service, as proposed in the Third Further Notice (§ 7).

AT&T also agrees with the Commission that customers affected by an intercarrier sale or transfer of subscribers should not absorb a carrier change charge as a result of the transaction. However, in practice it may often be difficult or impossible to assure that “no carrier change charges will be imposed as a result of the transaction,” as suggested in the Third Further Notice (§ 6). This is because, even where a reseller transfers customers to the reseller’s underlying service provider, any change in the customers’ Carrier Identification Code (“CIC”) that may occur in connection with that transaction will trigger carrier change charges from the LECs that serve those customers.<sup>9</sup> Acquiring carriers cannot preclude affected customers from receiving such LEC-imposed change charges. Accordingly, the proposal in the Third Further Notice should be modified to provide that the acquirer will reimburse or credit affected customers who continue service with the acquirer for any LEC change charges that may be assessed upon them as a result of the transaction.

In light of the foregoing specific information that will be provided to affected customers through notices sent prior to the transaction, AT&T believes that no

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DA 00-2586, released November 17, 2000 (requiring compliance by May 1, 2001).

<sup>9</sup> Similarly, any transaction between carriers that have their own CICs (such as facilities based carriers) will likewise trigger LEC-imposed carrier change charges.

useful purpose would be served by requiring acquirers to send “another written notice reiterating this information after the transaction has occurred,” as described in the Third Further Notice (§ 6). Not only would the information in the second notice be duplicative, as the Commission acknowledges, but in most cases it would have no value for customers who will have already made a decision based on the initial notice to continue service with the acquiring carrier.<sup>10</sup> The second notice would thus simply impose substantial needless expense upon acquiring carriers, contrary to the Commission’s express objective in this proceeding of eliminating burdensome requirements upon carriers (Third Further Notice, § 4).<sup>11</sup>

There is likewise no necessity for the proposal in the Third Further Notice (§ 7) that acquired customers continue to be charged for any period of time following the transaction at the same rates, terms and conditions applicable to their service from the transferor carrier. Any such “transition” would impose enormous burdens on acquiring carriers to administer and bill for rates other than their own. Moreover, there is no need for any such “protection” because affected customers will be specifically advised in the pre-transaction notice from the acquiring carrier that they have the right to select a

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<sup>10</sup> The second notice will, of course, have no value whatever for customers who, based on the initial notice, have already selected a different service provider.

<sup>11</sup> Similarly, the Commission should not require carriers, as a condition of an acquisition, to commit to handling customers’ complaints regarding the original carrier’s services (Third Further Notice, § 7). In these transactions, all of the systems, records and personnel able to investigate and resolve the customers’ complaints continue to reside with the original carrier, which is better positioned to address those claims.

different service provider. This right to “vote with their feet” fully protects the interests of acquired customers.

The Third Further Notice (§ 6) also seeks comment on whether acquiring carriers should be required to provide the Commission with post-closing notice of those transactions, and to certify their compliance with requirements adopted in this proceeding. Although AT&T does not believe that such post-closing reporting is imperative to effectuate the purposes of this rulemaking, it does not object to reasonable procedures that would provide such information to the Commission without additional burdens on carriers. All that such reporting would appear to entail is simple letter notification to the Secretary of the Commission, stating the names of the parties to the transaction and the date of the closing, and attaching a specimen of the customer notice (which on its face should ordinarily be sufficient to show compliance with other Commission-prescribed requirements). Submission of this information to the Commission not later than 30 days following the closing, as suggested in the Third Further Notice (§ 7), should be a sufficient interval to fulfill regulatory objectives without undue burden upon acquiring carriers.

CONCLUSION

For the reasons stated above, the Commission should adopt the proposals in the Third Further Notice with the modifications described in AT&T's Comments.

Respectfully submitted,

AT&T Corp.

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